

UNITED STATES DISTRICT COURT
DISTRICT OF ARIZONA

United States of America,)
Plaintiff,) CR-08-303-TUC-DCB
v.)
Christopher Matthew Clements,) ORDER
Defendant.)

)

This matter was referred to the United States Magistrate Judge pursuant to 28 U.S.C. §636(b)(1)(B) and the local rules of practice of this Court for hearing and a Report and Recommendation (R&R) on the Defendant's Motions to Suppress. Before the Court is the Magistrate Judge's Report and Recommendation on the Defendant's Motions to Suppress. The Magistrate Judge recommends to the Court that the Motions to Suppress be denied. The Defendant filed Objections to this Recommendation and the Government filed a Response.

Defendant Clements filed two motions related to the events at the time of his arrest in October 2007: a Motion To Suppress Unlawful Seizure and a Motion To Suppress Statements. The Government opposed both motions.

FACTUAL BACKGROUND

Defendant's motions address an incident which occurred prior to Defendant's arrest for failure to register as a sex offender in March 2008. Defendant seeks to suppress statements made and identity

1 established from October 2007, which is proposed as relevant evidence to
2 be admitted by the Government in the current criminal action.

3 The Court will adopt the factual background contained in the Report
4 and Recommendation:

5 On the evening of October 5, 2007, Jobe Dickinson was
6 conducting surveillance in the parking lot of a bank in his
7 capacity as a Tucson police officer. Specifically, he was
8 conducting surveillance on a house while other officers
9 executed a search warrant there. The bank was closed at the
10 time. Defendant Clements was the passenger in a car that
11 drove into the bank parking lot, parked and looked around
12 the area. Dickinson observed Clements walk over to the
13 nearby bus stop and take something out of the trash can.
14 Thereafter, Clements and his friend drove away. Dickinson
15 thought this was suspicious and decided to follow the car
16 Clements was riding in. Clements eventually stopped at the
17 Circle K near 22nd Street and the Frontage Road in Tucson.
18 The driver of the car exited the car and went to the pay
19 phone. Clements went into the store to make a purchase.
20 Dickinson had requested assistance from a uniformed officer.
21 Tucson Police Officer Christopher Morin responded. Morin
22 went into the store and, at Dickinson's direction, asked
23 Clements if he would step outside the store to answer
24 questions. It is disputed concerning whether Clements asked
25 for permission to complete his purchase, but undisputed that
26 he did not complete the purchase. Clements left the store
27 and went to the west side of the store where he was
28 questioned by both Dickinson and Morin, and possibly other
officers. Clements was asked his name and date of birth.
Twice he gave false names. After giving a false name the
second time, Dickinson decided to place Clements under
arrest. Thereafter, Dickinson searched Clements' wallet,
recovered his Oregon driver's license and determined
Clements' correct identity. *Miranda*¹ warnings were never
given. Clements did not respond to questions concerning how
long he had been in Tucson. At some point after Clements
was under arrest, Dickinson searched the car Clements had
been riding in. Nothing was seized as a result of the search
of the car. After Clements gave the second false name, he
made no further incriminating statements.

(R&R at 1-2.)

¹*Miranda v. Arizona*, 384 U.S. 436 (1966).

DEFENDANT'S OBJECTIONS

2 The Magistrate Judge found that the first statement of a false name
3 should not be suppressed because Clements was not in custody when the
4 statement was made. As to the second false name given, the issue was
5 whether or not *Miranda* was violated. The Magistrate found that even if
6 Clements was in custody when the second inquiry of his identity occurred,
7 Clements' false response should not be suppressed. The R&R analyzed that
8 the fact of Defendant's identity was never subject to suppression.
9 Further, there was no basis to suppress statements made by the Officers
10 advising Clements of his obligation to register as a sex offender.
11 Finally, after Clements provided a false name for the second time, no
12 incriminating statements were obtained and no other evidence was
13 "seized," consequently the absence of a *Miranda* warning at that juncture
14 was irrelevant.

15 Defendant challenges that portion of the Magistrate's R&R
16 concerning the time of his seizure. Defendant asserts that his arrest in
17 October 2007, as well as any evidence derived from the encounter with law
18 enforcement was an unlawful seizure by law enforcement. Defendant further
19 argues that any statements made by him during the police contact on
20 October 5, 2007, should be suppressed as they were the product of a
21 custodial interrogation and subject to *Miranda* restrictions.

22 The Government responds that the Defendant's identity cannot be
23 suppressed regardless of the legality of the contact with officers. In
24 addition, there was not an unlawful seizure of the Defendant as the
25 contact with the Defendant was consensual. His statements were made
26 voluntarily and were the product of a non-custodial interview.

STANDARD OF REVIEW

When objection is made to the findings and recommendation of a magistrate judge, the district court must conduct a de novo review. *United States v. Reyna-Tapia*, 328 F.3d 1114, 1121 (9th Cir. 2003).

DISCUSSION

Defendant's identity is not suppressible. The Supreme Court has held that "[t]he 'body' or identity of a defendant or respondent in a criminal or civil proceeding is never itself suppressible as a fruit of an unlawful arrest, even if it is conceded that an unlawful arrest, search, or interrogation occurred." *INS v. Lopez-Mendoza*, 468 U.S. 1032, 1040 (1984); *United States v. Crews*, 445 U.S. 463, 477 (1980) (victim's in-court identification not suppressible despite unlawful arrest of defendant).

Defendant was in custody after he gave the second false name, and although he was never given his *Miranda* rights, no incriminating statements were made after that point in time and no other evidence, other than Defendant's true name and identity were recovered. The courts have repeatedly held that officers can ask an in-custody defendant for identifying information without first providing *Miranda* warnings. *Pennsylvania v. Muniz*, 496 U.S. 582, 601(1990).

Further, if Defendant's claim is that by unlawfully eliciting his identity, the officers would then have unlawfully, as fruit of the poisonous tree, determined that he was a registered sex offender, then that argument is foreclosed by precedent.(TR 86-87, 90-91.) *See United States v. Guzman-Bruno*, 27 F.3d 420, 421 (9th Cir. 1994)(statements made to the arresting officers which led to the government's determination of alienage would not be suppressed); *United States v. Orozco-Rico*, 589 F.2d

1 433, 435 (9th Cir.1978) ("[T]here is no sanction to be applied when an
2 illegal arrest only leads to discovery of the man's identity and that
3 merely leads to the official file or other independent evidence.").

4 All additional statements were either voluntary or not
5 incriminating. Not every question in a custodial setting constitutes
6 interrogation. *United States v. Gonzalez-Sandoval*, 894 F.2d 1043, 1046
7 (9th Cir. 1990). The Court does not find any statements made by
8 Defendant in violation of *Miranda*.

9 **CONCLUSION**

10 Accordingly, after conducting a de novo review of the record,

11 **IT IS ORDERED** that the Court **ADOPTS** the Report and Recommendation
12 (Doc. No. 42) in its entirety. The Objections (Doc. No. 46) raised by
13 the Defendant are **OVERRULED**.

14 **IT IS FURTHER ORDERED** that Defendant's Motion To Suppress Unlawful
15 Seizure (Doc. No. 8) and the Motion To Suppress Statements (Doc. No. 9)
16 are **DENIED**.

17 DATED this 9th day of July, 2008.

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22 **David C. Bury**
23 **United States District Judge**
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